

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHARLES COLE

Claimant

VS.

CITY OF SALINA

Respondent

AND

FIREMANS FUND INSURANCE

Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 150,511

ORDER

Claimant appeals from a review and modification Order entered on July 17, 1995 by Administrative Law Judge George R. Robertson.

APPEARANCES

Claimant appeared by and through his attorney John M. Ostrowski of Topeka, Kansas. Respondent and its insurance company appeared by and through their attorney Martin J. Keenan of Great Bend, Kansas.

RECORD AND STIPULATIONS

This case comes before the Appeals Board on the basis of stipulated facts reflected in a proceeding held before Administrative Law Judge George R. Robertson on July 13, 1995. The stipulated facts are set forth in more detail as a part of the findings of fact and conclusions of law below.

ISSUES

The sole issue on appeal is whether the claimant's right to temporary total disability benefits is limited to 415 weeks or, instead, by the maximum dollar limits applicable for the date of accident, in this case as set forth in K.S.A. 44-510f(a)(2) (Ensley).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds the decision by the Administrative Law Judge denying additional temporary total benefits should be reversed.

Claimant suffered personal injury by accident arising out of and in the course of his employment on December 1, 1986. The parties entered an Agreed Award on September 4, 1991. Claimant was awarded 35.43 weeks of temporary total disability benefits at \$230.54 per week in the total amount of \$8,168.03. He was also awarded benefits for a 20 percent (20%) permanent partial work disability, making a total award of \$25,670.

The parties agree that all of the benefits awarded pursuant to the Agreed Award have been paid. The parties further agree that claimant became temporarily totally disabled on March 13, 1995 as a result of his original work-related injury. The Administrative Law Judge awarded additional medical treatment but declined to award temporary total disability benefits, finding that the right to temporary total disability benefits was limited to 415 weeks from the date of accident.

The Appeals Board disagrees with the conclusion that temporary total disability benefits are limited by the 415 weeks. Respondent cites K.S.A. 44-510e (Ensley) in support of its argument for a 415-week limit; however, this section clearly refers to temporary or permanent partial general disability. The only limit on temporary total disability is the dollar limit expressed in K.S.A. 44-510f(a)(2) (Ensley). The version applicable in this case provided for a \$75,000 limit. See K.S.A. 44-510f(a)(2) (Ensley). On the basis of the stipulation, the Appeals Board finds claimant should be awarded temporary total disability benefits at the agreed upon rate of \$230.54 per week until claimant is released to return to work by the treating physician or until claimant reaches maximum medical improvement, subject to the statutory maximum of \$75,000.

WHEREFORE, the Appeals Board finds respondent should be and is hereby ordered to pay claimant, in addition to medical benefits previously ordered, temporary total disability benefits at the rate of \$230.54 per week beginning March 13, 1995 and continue until claimant is released to return to work by the treating physician or reaches maximum medical improvement subject to the statutory maximum of \$75,000.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: John M. Ostrowski, Topeka, KS
 Martin J. Keenan, Great Bend, KS
 George R. Robertson, Administrative Law Judge
 Philip S. Harness, Director